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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**JOINT SUBMISSION IN RESPONSE TO
DKT. 285 RE: SEALING PORTIONS OF
SEPTEMBER 30, 2021 HEARING
TRANSCRIPT**

Referral: Hon. Susan van Keulen, USMJ

1 November 12, 2021

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th Floor
6 280 South 1st Street
7 San Jose, CA 95113

8 Re: Joint Submission in Response to Dkt. 285 re: Sealing Portions of September 30,
9 2021 Hearing Transcript
10 *Brown v. Google LLC*, Case No. 5:20-cv-03664-LHK-SVK (N.D. Cal.)

11 Dear Magistrate Judge van Keulen:

12 Pursuant to Your Honor's September 29, 2021 Order to Seal the Courtroom (Dkt. 285),
13 Plaintiffs and Google LLC ("Google") jointly submit this statement regarding sealing portions of the
14 September 30, 2021 hearing transcript.
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Google respectfully seeks to seal the following portions of the September 30, 2021 Hearing Transcript (“Transcript”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including: Google’s internal identifiers/cookies and their proprietary functions, as well as plaintiffs’ personally identifiable information. This Court has previously sealed the same or substantively similar information, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240, 276, 285, 286, 306, 320. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Transcript:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
September 30, 2021 Hearing Transcript	Portions Highlighted in Yellow at 59:17; 68:13-14; 69:1-2, 9-10, 14	Plaintiffs
September 30, 2021 Hearing Transcript	Portions Highlighted in Yellow at 65:4-6	Google

The parties conferred on the proposed redactions to the Transcript. Plaintiffs move for sealing of the proposed redactions at Tr. 59:17; 68:13-14; 69:1-2, 9-10, 14 and Google does not oppose. Google moves for sealing of the proposed redactions at Tr. 65:4-6 and Plaintiffs do not oppose.

I. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). The right to access is further diminished where, as here, a party seeks to prevent the disclosure of information discussed during a hearing on a non-dispositive discovery motion; rather than the more stringent “compelling reasons” standard, a party seeking to seal materials in these circumstances must make only a “particularized showing” of “good cause.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006). A “strong presumption of access” does *not* apply to sealed discovery documents attached to non-dispositive motions; a “party seeking disclosure must present sufficiently compelling reasons why the sealed

1 discovery document should be released.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307
 2 F.3d 1206, 1213 (9th Cir. 2002). Sealing is appropriate when the information at issue constitutes
 3 “competitively sensitive information,” such as “confidential research, development, or commercial
 4 information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D.
 5 Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)
 6 (acknowledging courts’ “broad latitude” to “prevent disclosure of materials for many types of
 7 information, including, but not limited to, trade secrets or other confidential research, development, or
 8 commercial information”).

9 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”** 10 **STANDARD AND SHOULD ALL BE SEALED**

11 Although the materials that Google seeks to seal here easily meet the higher “compelling
 12 reasons” standard, the Court need only consider whether these materials meet the lower “good cause”
 13 standard. Courts have repeatedly found it appropriate to seal documents that contain “business
 14 information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-99. Good
 15 cause to seal is shown when a party seeks to seal materials that “contain[] confidential information
 16 about the operation of [the party’s] products and that public disclosure could harm [the party] by
 17 disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014
 18 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive
 19 standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v.*
 20 *Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information
 21 “is appropriately sealable under the ‘compelling reasons’ standard where that information could be
 22 used to the company’s competitive disadvantage”) (citation omitted).

23 Here, the Transcript comprises confidential information regarding highly sensitive features of
 24 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 25 information provides details related to Google’s internal identifiers/cookies and their proprietary
 26 functions, as well as plaintiffs’ personally identifiable information. Such information reveals Google’s
 27 internal strategies, system designs, and business practices for operating and maintaining many of its
 28 important services while complying with legal and privacy obligations.

1 Public disclosure of the above-listed information would harm Google’s competitive standing it
2 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
3 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone is
4 a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-
5 02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
6 sensitive business information related to Google’s processes and policies to ensure the integrity and
7 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
8 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
9 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
10 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
11 motion to seal as to “internal research results that disclose statistical coding that is not publically
12 available”).

13 Moreover, if publicly disclosed, malicious actors may use such information to seek to
14 compromise Google’s internal identifier/cookie systems. Google would be placed at an increased risk
15 of cyber security threats, and data related to browsing of users could similarly be at risk. *See, e.g., In*
16 *re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
17 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
18 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
19 threat is an additional reason for this Court to seal the identified information. The information Google
20 seeks to redact, including internal identifiers/cookies and their functionalities, is the minimal amount
21 of information needed to protect its internal systems and operations from being exposed to not only its
22 competitors but also to nefarious actors who may improperly seek access to and disrupt these systems
23 and operations. The information also includes plaintiffs’ personally identifiable information that
24 should remain private and confidential. The “good cause” rather than the “compelling reasons”
25 standard should apply but under either standard, Google’s sealing request is warranted.

26 **III. CONCLUSION**

27 For the foregoing reasons, Google respectfully requests that the Court seal the identified portions
28 of the Transcript.

Respectfully,

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/s/ Andrew H. Schapiro

/s/ Alexander P. Frawley

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ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission.
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has
concurred in the filing of this document.

Dated: November 12, 2021

By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Counsel on behalf of Google LLC